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MICHIGAN HOUSE OF REPRESENTATIVES

**MATT HUUKI**  
STATE REPRESENTATIVE

June 22, 2011

Dear Colleague,

HB 4746 seeks to restore the balance between local zoning interest, private property rights, and the public's need for aggregate material that served the citizens of Michigan well for the past 80 years. Unfortunately, a recent Supreme Court decision, Kyser vs. Kasson Township, eliminated this balance to the significant detriment of job providers. As an example, a well-respected local aggregate producer was shut down in my district due to the Kyser decision. This is a loss of 35 jobs and the loss of locally available aggregate has resulted in significantly higher than anticipated construction costs.

I have attached a summary of the legislation and a list of supporters for your review. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Huuki", is written over a horizontal line.

Matt Huuki  
State Representative  
110th District

## **Bill Content and Support for HB 4746 and SB 470**

The legislation would codify the "very serious consequences" test in the Zoning Enabling Act to allow for the extraction of natural resources. This standard worked for more than 80 years and was established in case law.

- The Supreme Court ruled in 2010, in *Kyser vs Kasson Township*, that because this standard was a matter of case law, and not statute, that the legislature would need to codify the "very serious consequences" standard. HB 4746 would do just that; codify the "very serious consequences" standard. Without 4746, townships and municipalities could say reject operations with little or no justification.
- HB 4746 would not eliminate local control. The standard strikes the balance between private property rights, local zoning interest, and the public's need for aggregate. Importantly, Townships and Municipal Governments maintain a high degree of control over the siting and expansion of aggregate facilities.
  - If the "very serious consequences" test cannot be met, a Township or City may reject a permit.
  - If the "very serious consequences test" can be met, local authorities can restrict hours of operation, require visual screening or dust control measures, just to name a few.
- "Very serious consequences" test means just that the extraction of natural resources should occur unless very serious consequences would exist. For example, you cannot site a gravel operation next to a school.
- The bills are needed to protect Michigan businesses from regulation that will put them out of business, jeopardizing many jobs and negatively affecting Michigan's economy.
- This standard is critical to the survival of the aggregate industry: you cannot move what is in the ground. Aggregate material has been part of the "very serious consequences test" for this reason. A residential neighborhood or a new building, for example, could move locations or meet specific planning and zoning criteria. A natural resources deposit must be mined in its existing location.
- **Bill supporters include:**
  - Michigan Aggregate Association (MAA),**
  - Michigan Infrastructure Transportation Association (MITA),**
  - Michigan Manufacturers Association,**
  - The Associated Builders and Contractors of Michigan,**
  - Teamsters,**
  - County Road Association of Michigan,**
  - Operating Engineers,**
  - Concrete Paving Association,**
  - St. Mary's Corporation,**
  - LaFarge Corporation North America and**
  - the Department of Environmental Quality (DEQ).**

## The First Casualty

The ValleyView Quarry near Houghton has been shut down by Portage Township, which has led to the loss of 35 jobs. This also impacts local suppliers and contractors.

### **If HB 4746 does not pass:**

**The loss of locally available aggregate products will significantly increase the cost of road and other construction projects to the detriment of Michigan taxpayers.**

We have already lost 35 jobs in Portage Township. Who is next?

The ValleyView Quarry has been accused of operating illegally. This is not true. Letters from the Portage Township Planning Commission Chair and a legal memo from Clark Hill PLC, refute these claims.

### **Background**

**Aggregate producers employ more than 8,000 people statewide.**

Aggregate products (sand, gravel, limestone, etc) are used in all types of construction products, roads, buildings, steel, glass, pharmaceuticals, etc.